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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

GLORIA STOLLAR,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Gloria Stollar, petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois, entered in the case of *The People of the State of Illinois* v. *Gloria Stollar,* on May 20, 1964.

Opinion Below.

The opinion of the Supreme Court of Illinois is printed in Appendix A hereto, *infra.* App. p. 1, and is reported at 31 Ill.2d 154, 201 N.E.2d 97.

Jurisdiction.

The judgment of the Supreme Court of Illinois was entered on May 20, 1964, a timely petition for rehearing was denied on September 25, 1964. The jurisdiction of this Court is invoked under 28 U.S.C., section 1257(3).

Question Presented.

Whether the petitioner was denied due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, as the result of her being sentenced to imprisonment for eighteen months after a summary trial for contempt of court.

Statement.

The petitioner, Gloria Stollar, was arrested by writ of attachment, taken from her hospital bed where she had given birth to an illegitimate child, and, in an emotionally disturbed state, was taken before the Probate Court of Cook County to be dealt with summarily. The Court was informed that the defendant's father believed her to be in need of psychiatric care. However, no sanity test was ordered nor did the court conduct a sanity hearing.

With the amicus curiae prosecuting, the court immediately proceeded with the taking of evidence and, although no formal plea had been entered, commenced the hearing by an examination of the petitioner. The following facts were in essence admitted by the petitioner.

In May, 1959, one Harry Stollar, an automobile dealer died, leaving the bulk of his estate to his daughter Jacqueline, with his wife Gloria, the defendant, as guardian. According to the inventory signed by the defendant, the minor's estate amounted to approximately $48,000 dollars. By order of the Probate Court, that money was distributed to the following accounts: $7,500 in Bell Savings and Loan Association; $7,500 in Chicago Federal Savings and Loan Association; $7,500 in Belmont National Bank of Chicago; and $13,764.53 in the Aetna State Bank. The Probate Court allowed the withdrawal, at first of $200 per month and, later $300 per month as and for the support and maintenance of the minor.

The evidence further showed that in addition to the $48,000, accounted for in the inventory, there were two insurance policies of the Prudential Insurance Company, on the life of Harry Stollar, the proceeds of which amounted

to $24,296.05. The beneficiary of these policies also was Jacqueline Stollar. This money was paid by the Prudential Insurance Company to Gloria Stollar as guardian of the estate of Jacqueline Stollar, a minor. This money she deposited in another account in the Aetna State Bank. Thereafter, without discharging her attorney, Arthur Bluestein, Mrs. Stollar, retained the services of another attorney, Mortin I. Kovin, who prepared and presented a petition to the Probate Court asking leave of court for the withdrawal of the various savings accounts for redeposit in the Aetna State Bank. This was granted, but the order was drafted in such a way as to omit the requirement that the funds be redeposited subject to order of the Probate Court. In order to accomplish the withdrawal from the savings accounts, the defendant executed certain lost pass book affidavits, although the evidence seemed to indicate that she was aware of the fact that the books were in the possession of Attorney Bluestein.

Without leave of court, the petitioner, began to withdraw large sums of money from the various accounts of the estate. Much of this money was given to her father who was trying to operate Harry Stollar's automobile lot. Other monies according to her explanation were used for the payment of rent, private school for Jacqueline, maid, food, clothing for Jacqueline, medical expenses for the family, telephone, summer cabana at a motel, mortgage payments on her former home in Skokie, Illinois, Attorney's fees, automobile expenses, entertainment, utilities, taxes, beauty parlor, landscaping and funeral expenses.

At the time of trial approximately $90.00 of the total estate including the proceeds of the two insurance policies, remained.

In explanation the defendant stated that she gave large sums of money to her father in the hope of carrying on the automobile lot of her late husband. This she was not able to do. In further explanation she said that she had been used to a high standard of living when her husband was alive and that she did not realize that what she did was wrong, assuming that because the money was her daughter's, it was hers also, and further, she provided for her daughter very well.

The questions presented in this petition were raised primarily as a result of the Supreme Court of Illinois' opinion affirming the order of the Probate Court of Cook County. Therefore a petition for rehearing was presented which reads in whole as follows:

"We respectfully request the Court to reconsider this case in the light of the questions which the opinion of the Court has raised and which are more numerous than the questions which it has answered.

"The Court has said that the maximum sentence provided in the Criminal Code of 1961 for offenses for which punishments are not otherwise specified does not apply to contempts. The Court has raised but failed to answer the question whether there is a maximum sentence for contempt.

"By holding that contempt is not a criminal offense, as defined by the Code, the Court has raised the question whether contempt, which would not be a criminal offense as is defined in Article II Section 8 of the Constitution of the State of Illinois, can be punished by imprisonment in the penitentiary or by death. The further question in this context is whether the rights of a contempt defendant are governed by Section 9 of Article II.

"If a person pleads guilty to a contempt, must he be warned of the consequences of his plea, and if so, what shall the trial court instruct a defendant as to the possible penalties.

"These questions can be most satisfactorily answered by this Court's holding that contempt is an offense within the meaning of the Criminal Code of 1961 and that the penalties provided therein are the penalties in cases of contempt. If the Court adheres to its decision, the box of Pandora is open."

Sections 8 and 9 of Article II of the Constitution of the State of Illinois are:

> § 8. No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger: *Provided,* that the grand jury may be abolished by law in all cases.
>
> § 9. In all criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

Reasons for Granting Writ.

The question which this case raises is essentially the one at which this Court raised by its dictum in *United States* v. *Barnett*, 376 U.S. 681, 84 S.Ct. 984, 12 L.Ed.2d 23, as applied to state court contempts. That is, whether "punishment by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses." 84 S.Ct. at page 992, n. 12.

The facts of the case indicate that the petitioner could very well have been charged with the crime of embezzlement under the Illinois Criminal Code of 1874. (Ill. Rev. Stat. (1961) Ch. 38, Secs. 207, *et seq.*) She could not be held to answer such charge except upon indictment. Upon being held to answer such charge, she would have been entitled to trial by jury. She would immediately have known the seriousness of the charge and the extent of punishment, one to ten years in the penitentiary. A plea of guilty could not have been entered without the court's having carefully apprised her of the possible consequences of that plea. (Rule 26, Rules of the Supreme Court of Illinois, Ill. Rev. Stat. (1963) Ch. 110, Sec. 101.26.) She would have been surrounded by the presumption of innocence and all of the safeguards which have been developed to shield the innocent from conviction and the guilty from undue oppression. Gloria Stollar was however, sentenced to a punishment as severe as would have been possible had she been charged with the felony but was tried summarily as a contemnor.

She was brought before the court summarily and upon promises of leniency extended to her and her attorney by the amicus curiae agreed to testify concerning her stewardship of her daughter's estate. Inconsistent with the spirit of Rule 26 of the Supreme Court of Illinois the trial court

did not apprise her of the consequences of what was, in effect a plea of guilty. When the Court's attitude became apparent, she asked for a continuance; this was denied. The Court, after exacting a full confession from her sentenced her to eighteen months in the county jail in spite of the request by the amicus curiae for leniency and the recommendation of the State's Attorneys office of six months. A term of eighteen months in the county jail is not a penalty for a petty offense either under the United States Code or the Illinois Criminal Code of 1961. The procedure which the trial court followed in this case approaches the unconscionable and is a violation of the due process requirements of the XIVth Amendment to the constitution of the United States. In the light of this court's pronouncement in the *Barnett* case the question in this case is of great importance and should be decided.

CONCLUSION.

For the above and foregoing reasons a writ of certiorari should issue to review the judgment of the Supreme Court of Illinois entered in this case.

Respectfully submitted,

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APPENDIX

APPENDIX

APPENDIX A

OPINION OF THE SUPREME COURT OF ILLINOIS

The People of the State of Illinois, Defendant in Error, v. Gloria Stollar, Plaintiff in Error.

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

This is a writ of error to review a judgment of the probate court of Cook County which found the respondent, Gloria Stollar, guilty of contempt of court and sentenced her to imprisonment in the county jail for 18 months. The respondent does not challenge the sufficiency of the proof to establish her guilt, but contends that her constitutional rights were violated because the trial court erred in failing to conduct a hearing to determine her sanity, because she was induced by promises of leniency to admit the charges made against her, and because the request of her attorney for a continuance was denied. She also contends that the sentence was excessive upon the facts, and that it exceeded the permissible statutory maximum.

Harry Stollar, the respondent's husband, died May 9, 1959. He left the bulk of his estate to their daughter, Jacqueline, who was then five years old. The respondent was appointed guardian of her daughter's estate. On July 15, 1959, she filed her inventory as guardian, showing assets in the form of cash in the sum of $47,784.90. Of this amount, $81.09 remained on July 13, 1962. In addition, she received the proceeds of two insurance policies payable to Jacqueline in the total sum of $24,296.05, which were not included in the inventory that she filed as guardian. The bank account in which she deposited this amount was closed on June 8, 1960, by the last withdrawal in the sum of $5100.

On September 24, 1962, the attorney who represented the respondent as guardian filed a petition reciting that she had refused to cooperate with him, alleging his belief that she had withdrawn considerable moneys from the minor's estate over and above the amounts authorized by orders of the court, and asking leave to withdraw his appearance as attorney for the guardian. Notice of this petition had been mailed to the respondent on September 4, 1962. A guardian *ad litem* was appointed to investigate the allegations of the petition. The report of the guardian *ad litem* disclosed the condition of the estate and the existence of the two insurance policies that had not been inventoried. A rule to show cause was issued, hearings were conducted and the judgment under review was entered.

The rule to show cause was returnable November 2, 1962. The respondent did not appear on that date. Later it was learned that she had given birth to a child on November 1, 1962, and was hospitalized. The hearing on the rule to show cause was continued to November 13, 1962. The contention that a sanity hearing was required was not raised in the trial court by the attorney who represented the respondent. As asserted now, it is based upon two statements made during the course of the proceedings. The first was made by an assistant state's attorney on November 9. He said: "The record will show that the reason why she failed to appear was that she was suffering from an emotional disturbance * * * and we were not given the information as to what hospital or where she was." The second statement was made by the guardian *ad litem* on November 13, at the outset of the hearing on the rule to show cause. He said: "I have come to the court, not only on behalf of the minor, but wish to relate for the father of Mrs. Stollar, who was on one former occasion before Judge Cooney, and pleaded that Mrs. Stollar has been emotionally disturbed

and upset and that some mercy should be given to her and that she should be examined and cared for by a psychiatrist." Both of these remarks must be appraised in the context of all that transpired before the court, and particularly in view of the desire of the respondent, expressed by her father, to keep the birth of the child from being a "public record." So appraised, we are of the opinion that they can not fairly be taken as indicating that anyone connected with the proceeding in the trial court thought that the mental condition of the respondent was such that a sanity hearing was indicated. The attorney who represented respondent there made no such suggestion, and the written motion for a new trial that he filed made no such claim.

The motion for a new trial, however, did assert that the defendant's constitutional rights were violated because the court refused to grant her sufficient time to prepare her defense and because the guardian *ad litem* misled the respondnt into what amounted to a plea of guilty by the representation that he would recommend leniency. No request for a continuance was made before the hearing commenced. After the respondent had testified for some time, her attorney requested "a short continuance." The court immediately adjourned the proceedings until three o'clock in the afternoon. On the following morning, when her attorney asked for a continuance "to give me time to prepare my case," the request was denied.

At the outset of the hearing, the guardian *ad litem* represented to the court, in the presence of respondent and her attorney, that her attorney had agreed that if the record so warranted, he would "consent and agree to vacating the order of appointment of Mrs. Stollar as guardian. If there is a finding of fraud of both the inventory and the current account, he is still willing to leave it up to the

mercy of the court as to any judgment or punishment that Mrs. Stollar should receive." He then continued with the statement that has been quoted earlier in this opinion. The court inquired as to whether this statement was satisfactory to Mrs. Stollar and then announced that it was satisfactory both to her and to her attorney. Moreover, the plaintiff in error testified that she had voluntarily indicated that she was willing to inform the court of all that had occurred in the performance of her duties as guardian of the estate and to place herself on the mercy of the court. She testified that she was not coerced to do this and that the court had made no promise that the judgment and punishment of the court "will be any less than you should receive."

These circumstances do not, in our opinion, indicate that the respondent was prevailed upon by promises of leniency to testify concerning her management of her daughter's estate, or that the trial court erred in refusing a continuance after the hearing had commenced.

The respondent's contention that the sentence of 18 months exceeded the maximum permitted by statute is based upon that portion of section 1—7 of the Criminal Code of 1961 which provides, "The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided may sentence the offiender to a term of imprisonment not to exceed one year or a fine not to exceed $1,000, or both." (Ill. Rev. Stat. 1961, chap. 38, par. 1—7.) The respondent reads this provision as limiting the permissible sentence that may be imposed for contempt of court. But that it relates only to those offenses defined in the Code, and does not apply to contempt of court is, in our opinion, made clear by section 1—3: "No conduct constitutes an offense unless it is described as an offense in

this Code or in another statute of this State. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree." Ill. Rev. Stat. 1961, chap. 38, par. 1—3.

To establish the excessiveness of the sentence, considered not as a matter of law but in the light of the facts disclosed by the record, the respondent argues that the mishandling of her daughter's estate was not due to a conscious attempt to commit a theft, but was due rather to her belief that her daughter's money was indistinguishable from her money, and to her lack of business knowledge. The record shows, however, that she understood what she was doing. The agent for the insurance company that had issued the two policies payable to her daughter, which the respondent had concealed, testified that she offered him the sum of $2000 if he would see that the checks in payment of the policies were made payable to her individually rather than as guardian of her child's estate. She admitted this. In addition, in arranging for the transfer of other funds into an account from which she was able to withdraw without court approval, she executed false affidavits stating that certain bank books had been lost, when she knew they were in the possession of her attorney. This, too, she admitted. And to bring about the transfer of these deposits she hired a lawyer other than the attorney who represented her as guardian. In the light of these circumstances, we can not say that the trial court abused its discretion in imposing sentence.

The judgment of the probate court of Cook County is affirmed.

Judgment affirmed.